

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

No. 2:12-cv-01282-JLR

MONITORING PLAN FOR
FEBRUARY 2019

The Monitoring Plan for February 2019, is dated February, 28, 2019.



Seattle Monitoring Team

Sustainment Plan Update Report

February 2019

S U S T A I N M E N T R E P O R T

February 2019

This report describes the efforts by the Seattle Police Department (SPD) to remain in full and effective compliance with the Consent Decree entered by United States District Judge James L. Robart in July 2012. The SPD continues in the main to sustain progress under the Consent Decree due to the special efforts and attention of Chief Best, Deputy Chief Garth Green, Assistant Chief Cordner, and many others throughout the SPD, from rank-and-file to command level officers. Of great help also are those involved, formally or informally, in external oversight: OPA Director Myerberg and Inspector General Judge. The Mayor, the City Attorney, Special Advisor McLay, and persons in other branches of city government and administration likewise merit thanks.

This memorandum reports on their achievements as well as areas that present opportunity for further improvement. It is important to note that crucial issues around discipline, accountability, the collective bargaining agreement, and accountability legislation, all bearing upon the sustainment of compliance, are currently pending before Judge Robart. Those issues are of such sufficient moment that one cannot judge the status of sustainment without them. Thus the Monitoring Team does not draw any conclusions at this stage whether the SPD remains or does not remain in compliance in whole or in part. Whatever the case may be, the SPD performs well in many areas.

A. Persons in Crisis

While there are many instances of excellent police work consistent with the letter and spirit of the Consent Decree that we could cite, the approach and de-escalation of encounters with persons in crisis stand out. Here are two examples from the SPD's Significant Incident Reports, a daily compendium of noteworthy police activity:

1. On 11/09/2018, at approximately 1803 hours, 2nd Watch North Precinct officers responded to the Greenwood Library, for a report of a male refusing to leave their public restroom. SFD was also dispatched to medically evaluate the male. Officers arrived to find the male brandishing a blood-filled hypodermic syringe, at SFD personnel. Officers contained the male in the restroom, summoned additional resources, and attempted to de-escalate the situation. During this interaction, the male told officers that he wanted to die and told officers to kill him. Officers observed the male repeatedly stab himself in the arms and neck with the syringe, draw out blood, and then squirt the blood into his mouth. CIT officers continued dialogue with the male, until a HNT officer arrived. After a two-hour standoff, the HNT officer successfully convinced the male to put down the syringe and exit the restroom, where he was placed into custody. SFD treated the male on scene. AMR transported the male to the hospital, for further medical treatment and a mental health evaluation. The involved officers used excellent teamwork, communication, and team tactics to bring a safe conclusion to a very volatile situation.

2. On 1-24-19 at about 1830 hours, Officers arrived at a residence in the area of SW Hanford St/50 Ave SW for a reported DV-Disturbance in progress. Subsequent on-scene investigation found that the incident was an escalating Crisis call with legal grounds for an ITA after threats of self-harm using a knife as well as other escalating behavioral concerns were determined. The home was cleared of all other occupants and negotiations with the distraught and unarmed subject began. The subject would refuse several initial attempts by officers to comply with transport with an arriving AMR. Based on the static nature of the incident at the time, it was determined that efforts at de-escalation and willful compliance continue. ... After more time passed, it was determined by SW [Precinct] supervisors to initiate a call-out for HNT units. After close to two hours of additional HNT rapport-building and de-escalation, the subject was eventually escorted to an awaiting AMR using de minimis force only. An officer sustained a minor laceration to a finger and was treated accordingly on location. SPD Unit 253 was kept apprised of the incident. Commendable efforts by all involved units, especially HNT resources for a successful resolution.

B. Community Survey

Although our January 2019 community poll found some areas in which community members expressed concern, there was generally quite good news. As reported by the survey firm of Anzalone Liszt Grove, which has conducted three

surveys of Seattle residents at roughly two-year intervals:

“The Seattle Police Department’s overall ratings remain steady, with high approval across racial lines. Nearly three-quarters of Seattle residents approve of the Seattle Police Department (74% approve / 21% disapprove), in line with the 72% who approved in 2016. Remarkably, approval is uniformly high across all racial groups, with approval among African Americans rising from 62% in 2016 to 72% this year. ... While in line with approval ratings from 2016, voters’ approval of SPD has improved remarkably from where it was six years ago (60% approval) and even from where it was in 2015 (64% approval).”

Anzalone notes that “The [SPD] get good marks for serving and protecting. Three-quarters of residents agree that Seattle Police do a good job ‘keeping people safe’ (74% agree) and 7 in 10 agree they do a good job ‘serving [my] neighborhood’ (70% agree). Views are similarly positive across racial and geographic lines.”

Although approval rates have improved, there is still a substantial disparity in the perception of blacks and Latinos as compared with the rest of Seattle when it comes to the SPD. It is important to note that nationwide, African Americans express less confidence in police and the reasons the police assert for taking action.

Anzalone found that a “majority (55%) of African American and Latino residents believe that SPD uses excessive physical force often, 4 in 10 believe the Department uses verbally abusive language, and a third (34%) believe racial slurs are often used towards minorities.”

According to the survey, African Americans (60%) and Latinos (49%) are far more likely to think the SPD frequently engages in excessive force than whites (40%) or Asians (31%).

“African Americans remain the most likely to believe SPD engages in racial profiling, with 69% saying SPD does it often, and over a quarter (28%) saying it happens *very* often.”

Importantly, the respondents who report having personal contact with SPD employees report high levels of confidence and trust for an urban environment, while the more generalized opinions about Seattle Police among those who have not had contact raise questions of legitimacy and procedural justice. These two levels of legitimacy—perceptions driven by personal experience and those informed by generalizations—do typically not track together. The latter typically lags further behind, fueled by the larger societal narrative. This context is important, and it serves to underscore the Monitor’s previous statements about the challenges and obstacles that the City and SPD face in order to earn generalized public perceptions of legitimacy for the Department.

“African Americans (26%) and Latinos (30%) were more than twice as likely to report having been stopped by the Seattle Police in a car this year than white residents (12%). They were also more than twice as likely to [report they were] stopped while on the street either inside or outside their neighborhood.” “A plurality of Seattleites (47%) disagree with the notion that SPD treats “all races and ethnicities equally,” with over a fifth (22%) *strongly* disagreeing. A majority of African Americans disagree with the statement (54% disagree), with African American women particularly in disagreement (61% disagree).”

The survey results thus indicate lingering concern among Blacks and Latinos about SPD’s use of force and significant racial imbalances in enforcement activity, despite an overall approval rating. There remains work to be done by the SPD in these areas. The monitoring team will work with the parties to conduct two disparity reviews in the coming months. The Monitor’s Community Survey Report will be filed shortly with the Court, as it has not yet been filed.

C. Use of Force

It is heartening to report that in 2018, the SPD engaged in fewer instances of intermediate force (Type II) and serious force (Type III), including officer-involved shootings, than in 2015, 2016, and 2017, as demonstrated in the following table prepared by the City of Seattle. The only category of force that increased substantially (from 76.5% to 83% of all reported force) was the lowest level of force (Type I). The SPD speculates this may be due to an over-reporting of handcuffing applications, which may in turn be addressed by a recent Court-

approved change to policy clarifying the reporting requirements. We congratulate the SPD on the fewer Types II and III incidents and will follow the SPD's research into the rise of Type I force.

Incident Type	2015	2016	2017	2018	Grand Total
Level 1 - Use of Force	1,554	1,177	1,272	1,818	5,821
Level 2 - Use of Force	477	376	358	348	1,559
Level 3 - OIS	15	5	21	3	44
Level 3 - Use of Force	20	20	12	21	73
Grand Total	2,066	1,578	1,663	2,190	7,497

It is good to see force trending downward. Nonetheless, there is significant racial and ethnic imbalance in the use of force. The Monitoring Team will look with interest to SPD's efforts in the upcoming disparity reviews to identify whether the causes of these disparities are unwarranted and, if so, how they can be addressed.

	White	Black or African American	Not Specified	Asian	Hispanic or Latino	Nat Hawaiian/Oth Pac Islander	American Indian/Alaska Native	Grand Total
Level 1 - Use of Force	42.30% (n=769)	28.22% (n=513)	21.07% (n=353)	4.35% (n=79)	3.14% (n=57)	0.61% (n=11)	0.33% (n=6)	100.00% (n=1,818)
Level 2 - Use of Force	42.82% (n=149)	31.61% (n=110)	14.66% (n=51)	3.45% (n=12)	6.32% (n=22)	0.29% (n=1)	0.86% (n=3)	100.00% (n=348)
Level 3 - Use of Force	47.62% (n=10)	33.33% (n=7)	9.52% (n=2)	9.52% (n=2)				100.00% (n=21)
Level 3 - OIS	66.67% (n=2)		33.33% (n=1)					100.00% (n=3)
Grand Total	42.47% (n=930)	28.77% (n=630)	19.95% (n=437)	4.25% (n=93)	3.61% (n=79)	0.55% (n=12)	0.41% (n=9)	100.00% (n=2,190)

D. The SPD's Capacity to Analyze Data

In the December 2013 Monitoring Team's Second Semiannual Report at p.7, we described the vital importance of a robust business intelligence system to manage the risk of constitutional misconduct:¹

¹ The SPD has come a long way. In 2013, the situation was dire. "The SPD simply does not have the data required to implement the Consent Decree, to manage the risk of unconstitutional conduct, to respond to the Monitoring Team's requests for data in order to measure progress, to enable the Court to assess speed and good faith of implementation, or to

“A business intelligence system, properly conceived and developed, is pivotal to SPD’s ability to hold itself accountable for constitutional policing and to test whether performance outcomes are consistent with the Settlement Agreement’s goals and ends.”

The business intelligence system came into being and was christened DAP—the Data Analytics Platform. The MT finds that from a design standpoint, the DAP appears solid. It has impressive potential capacity to measure officer performance on an individual and comparative basis; to analyze patterns, trends, and statistics; to perform studies on a historical and longitudinal basis; and to discover failures of leadership, supervision, discipline, and training; among other capabilities to manage the risk of police misconduct. Among other good things, the DAP is being used for important analytical work and reporting that have improved public transparency into core Consent Decree areas and enabled the Department to conduct the critical self-assessments required by the Sustainment Plan. The capacity to deal with Fourth Amendment constitutional failures is not only impressive in comparison to where SPD was at the outset of the Consent Decree, but also in comparison to most other major city police departments are today.

The Monitor has offered suggestions to SPD for how to improve upon the DAP, with special emphasis on accountability. For example, a way to incorporate the regular use of the DAP into the daily management of operations and performance management would be to include a section in the SPD’s annual performance evaluations. The effective use of data by all ranks, should serve as a consideration for promotions, transfers, and other departmental reward systems. Transparency is to the use of the DAP every much as body camera is to a police encounter with a community member.

The Monitor also recommends expanding access to individual officer data for senior-level commanders. Just recently, the Monitoring Team learned that

respond to routine inquiries by City Council for data needed for legislative purposes.” Second Semiannual Report, December 2013, p.1.

lieutenants and captains presently do not have permission to access individual officer profiles through the DAP (although officers' direct supervisors are able to access this data). In our recent meeting with SPD most senior executives, we learned that the restrictions on access by lieutenants and captains will be lifted when new software updates are rolled out in mid-2019. We will follow this matter closely.²

E. Terry Stops and Frisks

The City and the Monitoring Team recently completed an exhaustive review of SPD stops of pedestrian and drivers and associated frisks. The analysis is ongoing, but it appears that most stops flowed properly from a reasonable articulated suspicion or probable cause.

Conclusion

In sum, and putting aside for the moment the issues in front of Judge Robart, the SPD continues to sustain progress. The Department and its leadership deserve thanks and appreciation and have affirmatively removed impediments to building upon the letter and spirit of the Consent Decree, rather than chipping away at it. The resulting good will and willingness of Chief Best and her senior staff to engage collaboratively with the MT goes a long way. Throughout the remainder of the Sustainment Period the MT will continue to observe, assess, and work with SPD on areas that present opportunity for continued progress.

² There are other data available to managers and executives from sources other than the DAP. The DAP draws data from many sources, including but not limited to Use of Force reporting, Early Intervention System reviews, training records—all of which are individually reviewed by commanders before they are input into the DAP. In addition, SPD commanders are regularly provided summary performance data regarding the officers in their command and, moreover, are trained to drill down to the individual officer level as needed through direct engagement with the lower rank supervisors. The Monitor's DAP Review Report will be filed shortly with the Court, as it has not yet been filed.

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1 The Court hereby approves the Monitoring Plan of February 2019 dated February 28, 2019.

2 DONE IN OPEN COURT this _____ day of February, 2019.

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5 _____
6 THE HONORABLE JAMES L. ROBART
7 United States District Judge
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CERTIFICATE OF SERVICE

I certify that on the 28th day of February, 2019, I caused this document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record.

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DATED this 28th day of February, 2019.

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